

Carter Signs Bill Limiting

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Setting aside nearly 40 years of executive branch claims of "inherent" power to spy at will, President Carter yesterday signed legislation requiring court approval before the government can conduct electronic surveillance in most foreign intelligence cases.

Reportedly narrow exception was made for highly secretive National Security Agency operations, such as intercepts of communications between a foreign embassy and its superiors abroad.

As he signed the bill, the president said in a statement that, "It sacrifices neither our security nor our civil liberties. And it assures that those who serve this country in intelligence positions will have the affirmation of Congress that their activities are lawful."

The bill was passed with little fanfare this month in the rush to adjournment, but Senate Intelligence Committee Chairman Birch Bayh (D-Ind.)—suggested that its importance in the drive to reform the U.S. intelligence

community and curb abuses of the past could not be overstated.

Bayh hailed the measure on final passage as "a landmark in the development of effective legal safeguards for constitutional rights." He predicted that it would pave the way for enactment of comprehensive charter legislation for American intelligence agencies.

"Above all, the [foreign intelligence surveillance] act is a triumph for our constitutional system of checks and balances," Bayh said. "It establishes that the authority to conduct foreign intelligence surveillance in this country will be shared by all three branches of the government. It will no longer be the exclusive domain of the executive branch."

First asserted by President Franklin Roosevelt, the government's authority to wiretap and eavesdrop in the name of national security has been circumscribed by the courts in recent years, but not by legislation. In 1972, the Supreme Court held that electronic surveillance without judicial approval

was unconstitutional in domestic intelligence cases, but it deliberately left the issue unresolved in the field of foreign intelligence.

The measure Carter signed into law yesterday:

- Requires a federal court order for most installations of wiretaps or bugs to obtain foreign intelligence in this country. The warrants will be issued by a special, rotating panel of seven judges named by the chief justice of the United States and situated in Washington under elaborate security procedures. The court orders, and the justifications for them, will remain secret unless they later become an issue in legal proceedings, such as a spy trial.

- Permits the electronic surveillance of American citizens and other "U.S. persons" (such as resident aliens and corporations) only upon a judicial finding of probable cause to believe that the person is an "agent of a foreign power" and that the person is engaged in clandestine intelligence gathering which "may involve" a fed-

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eral crime. Americans suspected of other clandestine intelligence activities or of terrorism may also be targeted under certain circumstances.

- Allows the government (primarily NSA with the occasional help of an FBI "Black bag job" or break-in) to continue electronic spying without a court order if it is directed solely at the premises or communications of "official" powers, such as governments, factions or entities openly known to be directed and controlled by foreign governments. Even here the attorney general would have to certify that there is no substantial likelihood of Americans being overheard. A sealed copy of the certification would have to be supplied to the special court but it would remain unopened unless it needed to be examined in subsequent legal proceedings.

- Contains restrictions to prevent the resurgence of NSA "watch lists" concerning the international communications of listed Americans. The bill, however, does not deal with Americans abroad and it still permits

so-called "vacuum cleaner" intercepts of electronic communications between the United States and other countries.

- Accords the same protections to foreign visitors (nonresident aliens) as it does to Americans except under certain conditions, such as membership in an international terrorist organization or employment, during the sojourn in the United States, by a foreign power. Court orders are still required to put such individuals under electronic surveillance, but the government need not show any indication that a federal crime is about to be committed.

After haggling that at times threatened to leave the bill stalled in a Senate-House conference, the conferees approved the measure several weeks ago and won quick approval on the Senate floor Oct. 9 without debate.

The House adopted it Oct. 12 by 226 to 176 after a stiff fight by GOP conservatives, who said they were opposed to the limitations on executive power. While the measure was supported by the Carter administration,

Rep. John M. Ashbrook (R-Ohio) assailed it as "a total capitulation to the senator from Massachusetts [Edward M. Kennedy] and his erstwhile staffers and assorted outside advisers of the ACLU [American Civil Liberties Union] and Morton Halperin IIk." (A former White House aide who was once the target of a Nixon administration wiretap, Halperin is now head of the private Center for National Security Studies.)

Charged Ashbrook: "It is a disaster we will live to regret."

Under the current rules of a Carter executive order, the FBI has the job of carrying out all electronic surveillances for which court orders must be sought, even when the bureau is acting as surrogate for another agency. The exact extent of such spy-work is classified, but Kennedy, who served as chairman of the Senate conferees, has said that there would be more than 100 "targets" a year to be presented to the special court, based on the experience of the past year or two.